

Appl. No. 09/773,241  
Atty. Docket No. 8409  
Amdt. dated June 9, 2006  
Reply to Office Action of March 9, 2006  
Customer No. 27752

### REMARKS

#### Claim Status

Claims 1, 5, 7, 12-14, and 16-19, are pending in the present application. No additional claims fee is believed to be due.

Claims 2, 3, 4, 6, 8-11, 15, and 20, are canceled without prejudice.

Claims 1, 12, and 13, have been amended to more specifically characterize the at least one discontinuity. Support for these amendments can be found in the specification, for example, claims 6 and 8 as filed, claim 13 as filed, and claim 15 as filed.

Claims 7, 12, and 14, have been amended to correct their dependency. Support for these amendments can be found in the specification as filed, for example, in claims 6, and 8 as filed.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

#### Rejection Under 35 USC §103(a) Over Robles et al.

Claims 1, 5-10, and 16-19, have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,899,895 issued to Robles et al., hereafter, "Robles". Applicants respectfully traverse the rejection by the Office.

It is well settled that in order to establish a *prima facie* case of obviousness, three requirements must be met. MPEP §2143. First, there must be some suggestion or motivation, either in the cited references or in the knowledge generally available to one ordinarily skilled in the art, to modify the reference. *Id.* Second, there must be some reasonable expectation of success. *Id.* Third, the cited references must teach or suggest all of the claim limitations. *Id.*

Amended claim 1 recites, in part, "wherein the at least one discontinuity is defined by at least one cut line, wherein the at least one cut line is disposed substantially parallel with a first lateral edge of the at least one elastomeric side panel." In contrast, Robles teaches that the extensible side panel 30 can be slitted, cut, bonded, and folded. (col. 24, lines 28-33). Robles further teaches that "the slits, folds, bonds or cuts in the material are

Appl. No. 09/773,241  
Atty. Docket No. 8409  
Amdt. dated June 9, 2006  
Reply to Office Action of March 9, 2006  
Customer No. 27752

not limited to any particular sizes or shapes.” (col. 24, lines 33-35). However, Robles is silent with regard to the possible orientations of the cut with the exception of that shown in Figure 11 which is perpendicular to an inner edge 80 of the side panel. As such, Robles does not teach or suggest “wherein the at least one discontinuity is defined by at least one cut line, wherein the at least one cut line is disposed substantially parallel with a first lateral edge of the at least one elastomeric side panel”, as is recited, in part, in amended claim 1. Accordingly, a *prima facie* case of obviousness has not been established with regard to amended claim 1.

Because claims 5, 7, and 16-19 depend from amended claim 1, Applicants assert that a *prima facie* case of obviousness has similarly not been established against claims 5, 7, and 16-19. As such, Applicants assert that claims 1, 5, 7, and 16-19 are nonobvious over Robles and respectfully request the withdrawal of the rejection under 103(a).

#### Rejection Under 35 USC §103(a) Over Heki et al.

Claims 1-2, 6-7, and 9-15, have been rejected under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 5,906,008 issued to Heki et al., hereafter, “Heki”. Applicants respectfully traverse the rejection by the Office.

Although the rejection states that the above mentioned claims have been rejected under § 102(b), the language of the rejection tends to resemble that used for an obviousness rejection. As such, Applicants assume that the Office meant to reject the above mentioned claims based on 35 U.S.C. § 103(a) instead of the recited § 102(b).

Applicants note that claim 8 was not rejected in the current rejection based on Heki. Because Applicants have amended claim 1 by adding the claim elements of claim 8 therein, Applicants assert that a *prima facie* case of obviousness has not been established against amended claim 1. Additionally, because claims 7 and 12-14 depend from amended claim 1, Applicants assert that a *prima facie* case of obviousness has similarly not been established with regard to claims 7 and 12-14. As such, Applicants assert that claims 1, 7, and 12-14, are nonobvious over Heki and respectfully request the withdrawal of the rejection under 35 U.S.C. § 103(a).

#### Conclusion

Appl. No. 09/773,241  
Atty. Docket No. 8409  
Amdt. dated June 9, 2006  
Reply to Office Action of March 9, 2006  
Customer No. 27752

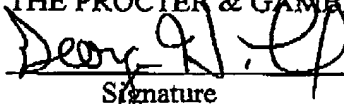
In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 U.S.C. § 103(a). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1, 5, 7, 12-14, and 16-19, is respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By

  
Signature

George H. Leal

Typed or Printed Name  
Registration No. 56,813  
(513) 634-1597

Date: 6-9-06  
Customer No. 27752